UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,370	11/12/2003	George J. Tarulis	CCK-0145	6383

7590 03/11/2008

KNOBLE & YOSHIDA, LLC
Eight Penn Center
Suite 1350
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103

EXAMINER	
BRADEN, SHAWN M	

ART UNIT	PAPER NUMBER
3781	

MAIL DATE	DELIVERY MODE
03/11/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/706,370
Filing Date: November 12, 2003
Appellant(s): TARULIS, GEORGE J.

Tod A. Kupstas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/12/2007 appealing from the Office action mailed 08/27/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4095544	Peters	6-1978
4466553	Zenger	8-1984

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3,4,22 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Peters (USPN 4,095,544) in view of Zenger (USPN 4,466,553).

Peters discloses the invention substantially as claimed. Peters discloses a bottom (17) a sidewall (19) integral with said bottom, said sidewall comprising a steel substrate (20), a first coating comprising tin (24) on an outer surface thereof and a second unbreached, intact coating (22) comprising tin on an inner surface thereof, said second unbreached, intact coating having a mass per unit area that is at least 0.20 pounds of tin per base box (col. 2 ln. 44), said sidewall further comprising no additional protective coating on said unbreached, intact second coating, Peters discloses said second coating has a mass per unit area that is at least .25 pounds of tin per base box (col. 2 ln. 44), Peters also discloses the second coating (22) is thicker than the first

coating (22)(col. 2 lns. 43-45). However Peters does not disclose a top end and a light colored fruit or vegetable.

Zenger teaches a top end (52) and a vegetable (green beans col. 11 ln 46) in the same field of endeavor for the purpose of packaging vegetables.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a vegetable and a lid to the container of Peters as taught by Zenger in order to keep vegetables fresh in storage.

With respect to the limitation “a drawn wall ironing process”, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

(10) Response to Argument

In response to appellant's first argument, “nowhere in Peters is it disclosed what the pound of tin per base box of the sidewalls are after the can is made”. Examiner's first response, there is nothing in the claim defining thickness before or after drawing, also the term, pounds per base box, is typically used for stock materials, i.e. (before material is drawn), it is not used as a measurement after a material is drawn. An example is that appellant has not disclosed a thickness of tin per base box before drawing. Furthermore, Peters discloses using "a coating of at least .25 lb tin per BB" (BB being basebox) col 1 ln 50 and in a particular embodiment starting with .75 lb per BB col 2 ln 43. Appellant has stated no further evidence stating that this base material would thin to below .20 lb per bb. It would be well within the skill of one with ordinary

skill in the art to start out with 1 or 1.25 or 1.50 lb per basebox thus guaranteeing a final thickness of **at least** .20 lb per bb.

Appellant Further argues, "it is noted that the finished product in Peters has more than one layer for the sidewall. As shown in FIG. 13, in the finished product there is a layer 26 and a layer 28 on the base metal 20. As a result of the process the layers 26 and 28 are fractured. See Peters, Col. 6, lines 35-41. As a result of the heat treatment, the corrosion resistance of the sidewall 19 is restored as shown in FIG. 15. See Peters, Col. 6, lines 58-65. Therefore, finished sidewall 19 has a steel substrate 20, a layer 26, a layer 28 and on top of those layers, layers 22 and 24 of tin". Peters does not disclose having additional protective coating on the unbreached, intact second coating 24, since layers 22 and 24 are clearly additional protective coatings on the breached layers 26 and 28" Examiner draws attentions to Fig. 1 or Fig. 13, for clarification purposes examiner views elements (26), and (28) to be part of the substrate (20), then a first coating comprising tin (24) on an outer surface thereof and a second unbreached, intact coating (22) comprising tin on an inner surface thereof, as stated in the final rejection (05/16/2007), therefore leaving no additional coatings on the second coating, meeting the claim language "no additional protective coatings on the unbreached, intact second coating". Also, the examiner would like to point out (26) and (28) are defined as layers and not coatings.

In response to appellant's argument "the Examiner in the Advisory Action is improperly trying to shift the burden of proof from the Office to the Appellant. Without first establishing a prima facie case for obviousness, the Examiner is suggesting that

the Appellant prove that features of Peters that are clearly not shown in Peters are not there. This is clearly impermissible. Furthermore, the Advisory Action is also improperly trying to present new grounds of rejections without removing Final status", the Examiner's response in the advisory action was for clarification as a result of appellant's arguments and not a new grounds of rejections or an attempt to shift the burden.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Shawn M Braden/
Shawn M Braden
Examiner, Art Unit 3781

Conferees:

/Anthony D Stashick/
Anthony Stashick
Supervisory Patent Examiner, Art Unit 3781

/Nathan J Newhouse/
Nathan J Newhouse
Supervisory Patent Examiner, Art Unit 3782